

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
AUDIOVOX CORPORATION,

Plaintiff,

- against -

WARREN COMMUNICATIONS  
NEWS, INC.,

Defendant.  
-----X

Case No.:

09

2401 B.H.  
S.I.

FILED

IN CLERK'S OFFICE

COMPLAINT FOR DECLARATORY  
JUDGMENT

★ JUN 05 2009 ★

BROOKLYN OFFICE  
DEMAND FOR JURY TRIAL

SEYBERT, J.  
LINDSAY, M.J.

Plaintiff AUDIOVOX CORPORATION ("Audiovox") hereby complains as  
follows:

**INTRODUCTION**

1. This is a declaratory relief action by Audiovox seeking a declaratory judgment of non-infringement against Warren Communications News, Inc. ("Warren" or "Defendant"), related to certain claims of copyright infringement.

2. Audiovox, a consumer electronics company based in Hauppauge, New York, faces an imminent threat of multimillion dollar litigation from the Defendant over Audiovox's alleged innocent forwarding of Warren's daily newsletter, *Consumer Electronics Daily* ("CED"), to four internal employees for informational purposes.

3. Audiovox believes that it has not infringed any of Defendant's copyrights related to CED and contends that, regardless of Audiovox's actions, Defendant has waived any right to assert its copyright claims against Audiovox.

4. Audiovox paid Warren for two subscriptions of CED, and on occasion during the relevant time period set forth in this Complaint, the subscribers, purely for informational purposes, allegedly forwarded the publications by email to other employees. Apparently,

Warren embedded digital tracking software in each copy of *CED*, and therefore became aware of Audiovox's alleged infringement in late March 2008. Warren claims that "massive" infringement occurred from on or around that time through September 17, 2008 and upon information and belief, were fully cognizant of the alleged daily "copying of their newsletters." At no point, however, did Warren do anything to stop the forwarding of its newsletters. Instead, Warren waited many months in order to be in a position to strike once Audiovox's potential damages reached a desired level. Warren used its embedded tracking software solely to magnify any potential damages claim, as it has done in the past with other alleged infringers.

5. Finally, once satisfied that it had compiled enough damages claims, on September 17, 2008, Warren alerted Audiovox of its claims, demanding that Audiovox cease and desist. Audiovox immediately complied without prejudice.

6. By choosing to forgo any action with regard to Audiovox's alleged infringement at the time Defendant became aware of the allegedly infringing activity, the Defendant has waived its right to relief. The Defendant may not ask a court to enforce rights that the Defendant itself is unwilling to protect.

7. Moreover, due to Warren's knowledge and waiver, Warren has granted an implied license to Audiovox covering any use made during the period of alleged infringement.

8. Audiovox further asserts that Warren lacks valid copyright ownership for a portion of the works allegedly infringed between late March and September 17, 2008. In addition, Audiovox believes that Warren's registered copyrights are, in whole or in part, invalid and thus not deserving of copyright protection.

9. Finally, the level of potential damages that Warren claims are available far outstrips the actual harm to Defendant, making any recovery of statutory damages fundamentally inequitable and unconstitutional.

10. Defendant has accused Audiovox of infringing the specific copyrights attached as Exhibit A to this Complaint, and Audiovox denies all liability for any of the alleged infringement. The parties have been unable to resolve this dispute and, based on conversations

with Defendant's counsel, Audiovox now faces an imminent threat of litigation. As such, there is a clear case or controversy between the parties that can only be resolved by this Court.

### **JURISDICTION AND VENUE**

11. This is an action for a declaratory judgment of non-infringement under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, in that there is an actual case or controversy between the parties due to Defendant's claims of copyright infringement in violation of the Copyright Act, 17 U.S.C. §§ 101 et seq.

12. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338 as a civil action arising under the Copyright Act and Declaratory Judgment Act.

13. Venue is proper under 28 U.S.C. §§ 1391(b)(2) as Audiovox conducts business in this District and all or a substantial part of the events giving rise to the claims contained in this Complaint occurred herein.

### **THE PARTIES**

14. Plaintiff Audiovox is a Delaware Corporation with its principal place of business at 180 Marcus Boulevard, Hauppauge, New York.

15. Defendant Warren is a Delaware corporation with its principal place of business in Washington, D.C.

16. Upon information and belief, Warren markets and distributes daily subscription newsletters, including the newsletters that are the subject of this action, in the State of New York.

### **BACKGROUND**

17. Audiovox has operated its consumer electronics business in Hauppauge, New York since 1965, providing products to the worldwide market and employment for local residents.

18. Audiovox and its foreign operations design, manufacture, market, and sell consumer electronics products ranging from home audio and video equipment to automobile equipment and portable personal electronics. Audiovox produces consumer electronics under its

own brand and a number of other widely-recognized brand names including RCA, Acoustic Research, Jensen, and Energizer. Although Audiovox's business has grown through its forty-four years of operation, Audiovox has always been a substantial presence in the consumer electronics industry.

19. Audiovox does not compete with Warren, as it is in the consumer electronics field and is not a publisher or distributor of informational newsletters and publications, which is the business of Warren.

20. In April 2004, Audiovox purchased a subscription to *CED*. This subscription was to be delivered via email to one of Audiovox's executives.

21. Audiovox purchased an additional subscription to *CED* in August 2005. This subscription was to be delivered via email to another Audiovox executive.

22. Audiovox has paid Defendant for these two subscriptions from the date of purchase through the present.

23. Audiovox subscribes to *CED* for informational purposes and derives no economic benefit from its limited use of the facts and information contained therein.

24. Upon information and belief, the same, or substantially the same, information provided in *CED* is contained in other publications that are distributed by other publishers; the material in *CED* is not sufficiently original to be protected by copyright law.

25. On September 17, 2008, Audiovox received a cease and desist letter from Defendant. This letter alleged that Audiovox had infringed Defendant's copyrights in *CED* during a period extending back to late March 2008.

26. Warren's copyright infringement claims are based on the copyright registrations that are annexed to this Complaint as Exhibit A, and are incorporated herein. Warren asserted that, for the period of alleged infringement, it had registered copyrights for each issue of *CED* as a separate work.

**CAUSE OF ACTION**

**DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

27. Audiovox realleges and incorporates by reference paragraphs 1 through 26 as though fully set forth herein.

28. Defendant has alleged that Audiovox infringed the works that are the subject of the copyright registrations set forth in Exhibit A. Audiovox hereby denies that it is liable for copyright infringement based upon, among other things, Warren's waiver of its rights to bring such claims against Audiovox. Therefore, there is an actual case or controversy as to whether Audiovox is liable for copyright infringement as to the works set forth in Exhibit A to the Complaint.

29. Defendant claims that Audiovox has infringed its copyrights on approximately 124 occasions between late March 2008 and September 17, 2008. Defendant further alleges that each issue of *CED* is covered by a copyright registration filed monthly.

30. For the alleged infringement period of late March 2008 to September 2008, the United States Copyright Office has registrations on file for *CED* covering the months of March 2008 (Registration number TX 6-660-990), April 2008 (Registration number TX 6-661-024), July 2008 (Registration number TX 6-661-006), and September 2008 (Registration number TX 6-664-367). (*See Ex. A*).

31. Each bundled registration contains between twenty-one (21) and twenty-two (22) discrete issues of *CED*. (*Id.*)

32. Audiovox vehemently disputes any allegation that it has engaged in copyright infringement; even if Audiovox forwarded the certain issues of *CED* that Defendant claims, Warren has waived its right to assert such claims due to its advertent permitting of the claimed infringing activity after becoming fully aware of the conduct at issue.

33. Specifically, Defendant first became aware of Audiovox's alleged infringement on or about March 28, 2008. Defendant subsequently began daily monitoring (through the use of embedded tracking software) of Audiovox's use of *CED* on April 2, 2008.

34. However, Defendant did not contact Audiovox about the allegedly infringing activity until September 17, 2008. Despite knowing that allegedly infringing activity may have occurred in April 2008, Defendant purposely chose not to alert Audiovox. Instead, Defendant waited five months in the hopes that Audiovox would continue its alleged “infringement.”

35. After five months of alleged infringement and a concomitant increase in potential damages, Defendant finally approached Audiovox.

36. Wielding its copyrights offensively, Defendant accused Audiovox of infringement subject to multiple millions of dollars in potential “statutory” damages as a means of forcing a settlement payout bearing no relationship whatsoever to the actual harm that could be proven.

37. Defendant’s sole purpose in waiting over five months before notifying Audiovox of the alleged infringement was to accrue more incidents of alleged infringement, and thus use this longer period of “infringement” to extract either a higher statutory damages award or an undeserved settlement agreement.

38. Defendant’s unreasonable and calculated delay results in a waiver of any right to assert an infringement claim against Audiovox.

39. In addition, Defendant’s failure to respond to acts that Defendant clearly contends are prohibited created an implied license of Defendant’s works for the limited uses made by Audiovox.

#### **PRAYER FOR RELIEF**

WHEREFORE Audiovox requests:

- a. That the Court declare that Audiovox has not infringed any copyrights held by Defendant;
- b. That the Court declare that Defendant has waived its right to assert an infringement claim against Audiovox;
- c. That the Court declare that Audiovox operated under an implied license to use Defendant’s copyrighted works;

- d. That Audiovox be awarded all damages that it has sustained as a consequence of the Defendant's acts complained of herein;
- e. That Audiovox be awarded its costs and attorneys' fees with respect to this action; and
- f. For such other and further relief as the Court deems appropriate.

Dated: June 5, 2009

WINSTON & STRAWN LLP

By: 

Michael S. Elkin  
Thomas P. Lane  
Robert C. Turner  
200 Park Avenue  
New York, New York 10166  
(212) 294-6700 (Telephone)  
(212) 294-4700 (Facsimile)

Attorneys for Plaintiff  
Audiovox Corporation

# **EXHIBIT A**



Copyright Office fees  
For cu  
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ange.  
Office  
copy-



**Form G/DN**  
For Group/Daily Newspapers and Newsletters  
UNITED STATES COPYRIGHT OFFICE

TX 6-660-990



EFFECTIVE DATE OF REGISTRATION  
(Assigned by Copyright Office)

APR 23 2008

Month Day Year

APPLICATION RECEIVED

APR 23 2008

ONE DEPOSIT RECEIVED

APR 23 2008

FEE RECEIVED

EXAMINED BY

CORRESPONDENCE

SEP 26 2008

DO NOT WRITE ABOVE THIS LINE.

1

If no previous  
registration under  
Identical title,  
check here ☐

TITLE OF THIS ☐ NEWSPAPER ☐ NEWSLETTER AS IT APPEARS ON THE COPIES

City/State

Consumer Electronics Daily

Washington DC

Month and year date on copies

MARCH 2008

Number of issues in this group

21

ISSN

1537-3088

Edition

2

NAME AND ADDRESS OF THE AUTHOR/COPYRIGHT CLAIMANT IN THESE WORKS MADE FOR HIM

Warren Communications News Inc  
2115 Ward Ct NW  
Washington DC 20037

AUTHOR'S CONTRIBUTION (check all that apply)

☒ Editing

☐ Compilation

☐ Text

☐ Other

3

DATE OF PUBLICATION OF THE FIRST AND LAST ISSUES IN THIS GROUP (Important Give month, day, and year)

(First) MARCH 3 2008 (Last) MARCH 31 2008  
Month Day Year Month Day Year

CERTIFICATION: I, the undersigned, hereby certify that I am the copyright claimant or the authorized agent of the copyright claimant of the works identified in this application, that all the conditions specified in the instructions on the back of this form are met, and that the statements made by me in this application are correct to the best of my knowledge.

Handwritten  
signature (X)

*Katrina McCray*

Typed or printed  
name of signer

Katrina McCray

PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name Loraine Taylor or Katrina McCray

Daytime telephone number

(202) 815-9200

Address (if other than given below)

DEPOSIT ACCOUNT

Account number DA067304

Name of account

Warren Communications News Inc

Fax

Email

info@warren-news.com

Certificate  
will be  
mailed  
in window  
envelope  
to this  
address

Name

Katrina McCray

Number/Street/Apt

2115 Ward Ct NW

City/State/ZIP

Washington DC 20037

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\*17 U.S.C. §506(b): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

1-97510988

Copyright  
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79-Form G/DN  
For Group/Daily Newspapers and Newsletters  
UNITED STATES COPYRIGHT OFFICE

TX 6-661-024

EFFECTIVE DATE OF REGISTRATION  
(Assigned by Copyright Office)

MAY 22 2008

Year

APPLICATION RECEIVED  
MAY 22 2008ONE DEPOSIT RECEIVED  
MAY 22 2008

FEE RECEIVED

EXAMINED BY

CORRESPONDENCE

SEP 26 2008

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identified this,  
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City/State

Consumer Electronics Daily

Washington DC

Month and year date on copies

Number of issues in this group

ISSN

Edition

APRIL 2008

12

1537-3088

2

NAME AND ADDRESS OF THE AUTHOR/COPYRIGHT CLAIMANT IN THESE WORKS MADE FOR HIRE

Warren Communications News Inc  
2115 Ward Ct NW  
Washington DC 20037

AUTHOR'S CONTRIBUTION (check all that apply)

☒ Editing☐ Compilation☒ Text☐ Other

3

DATE OF PUBLICATION OF THE FIRST AND LAST ISSUES IN THIS GROUP

Important: Give month, day, and year

(First) APRIL 1 2008 (Last) APRIL 30 2008  
Month Day Year Month Day Year

CERTIFICATION: I, the undersigned, hereby certify that I am the copyright claimant or the authorized agent of the copyright claimant of the works identified in this application, that all the conditions specified in the instructions on the back of this form are met, and that the statements made by me in this application are correct to the best of my knowledge.

Handwritten  
signature ofTyped or printed  
name of signer

Katrina McCray

PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name Lorene Taylor or Katrina McCray

Daytime telephone number

(202) 812-9700

Address (if other than given below)

DEPOSIT ACCOUNT

Account number QA057304

Name of account

Warren Communications News Inc

Fax

Email

info@warren-news.com

Certificate  
will be  
mailed  
in window  
envelope  
to this  
address

Name

Katrina McCray

Number/Street Apt

2115 Ward Ct NW

City/State/ZIP

Washington DC 20037

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2. A statement from the  
3. A statement from the101 Independence Avenue, S.W.  
Washington, D.C. 20540-4001For an online  
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www.copyright.gov

\*17 U.S.C. §506(a): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 405, or in any written statement filed in connection with the application, shall be fined not more than \$1,500.

1-98612551

Copyright Office fees are subject to change.  
For copyright registration, see the Copyright Office website at [www.copyright.gov](http://www.copyright.gov).



**Form G/DN**  
For Group/Daily Newspaper and Newsletters  
UNITED STATES COPYRIGHT OFFICE

TX 6-661-006

EFFECTIVE DATE OF REGISTRATION  
(Assigned by Copyright Office)08 28 08  
Month Day YearAPPLICATION RECEIVED  
AUG 28 2008ONE DEPOSIT RECEIVED  
AUG 28 2008

FEE RECEIVED

EXAMINED BY  
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CORRESPONDENCE ☐

SEP 26 2008

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1

If no previous registration under identical title, check here ☐TITLE OF THIS ☐ NEWSPAPER ☒ NEWSLETTER AS IT APPEARS ON THE COPIES

City/State

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Washington DC

Month and year date on copies

Number of issues in this group

ISSN

Edition

JULY 2008

22

1537-3088

2

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2115 Ward Ct NW  
Washington DC 20037

AUTHOR'S CONTRIBUTION (check all that apply)

☒ Editing☐ Compilation☒ Text☐ Other

3

DATE OF PUBLICATION OF THE FIRST AND LAST ISSUES IN THIS GROUP Important: Give month, day, and year

(First) JULY 1 2008 (Last) JULY 31 2008  
Month A Day A Year A Month A Day A Year A

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Name of account

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Number/Street Apt

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City/State/ZIP

Washington DC 20037

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• Complete all necessary spaces

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Rev. June 2008—62,008 Web Rev. June 2008 © Printed on recycled paper

U.S. Government Printing Office: 2008-461-113/20,021

